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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BRICK HOUSTON,

Plaintiff

v.

OFFENDERS MANAGEMENT DIVISION,  
et al.,

Defendants

Case No.: 2:20-cv-01453-JAD-DJA

**Order Denying IFP Status and Requiring  
Payment of the Full \$400 Filing Fee  
by July 19, 2021**

Plaintiff and Nevada state inmate Brick S Houston brings this lawsuit to redress civil-  
rights violations that he claims occurred during his incarceration in the Nevada Department of  
Corrections. Although he applies to proceed *in forma pauperis* (IFP), his history of filing  
frivolous and meritless actions in federal court precludes him from obtaining pauper status for  
this case. As 28 U.S.C. § 1915(g)—also known as the three-strikes provision of the IFP rule—  
provides, “if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any  
facility, brought an action or appeal in a court of the United States that was dismissed on the  
grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,”  
he may not proceed *in forma pauperis* and, instead, must pay the full filing fee in advance unless  
he is “under imminent danger of serious physical injury.”<sup>1</sup> Whether an inmate is under such  
imminent danger is assessed from the allegations in the complaint.<sup>2</sup>

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<sup>1</sup> 28 U.S.C. § 1915(g).


<sup>2</sup> See *Andrews v. Cervantes*, 493 F.3d 1047, 1052–55 (9th Cir. 2007) (holding that the  
availability of the imminent-danger exception to three strikes rule is to be assessed based on  
alleged conditions at the time the complaint is filed regardless of whether imminent danger exists  
at an earlier or later time).

1 Plaintiff has at least three strikes under 28 U.S.C. § 1915(g), as at least three of his  
2 previous inmate lawsuits were dismissed as frivolous or for failure to state a claim upon which  
3 relief may be granted.<sup>3</sup> His allegations also fail to plausibly allege that he was in imminent  
4 danger of serious physical injury at the time he filed his complaint. As a result, he must pre-pay  
5 the full \$400 filing fee if he desires to proceed with this lawsuit.

6 **CONCLUSION**

7 IT IS THEREFORE ORDERED that the application for leave to proceed *in forma*  
8 *pauperis* [ECF No. 4] is **DENIED**. Plaintiff has until July 19, 2021, to pay the entire \$400 fee.  
9 **If he fails to pay the full \$400 fee by July 19, 2021, this case will be dismissed** without  
10 prejudice and without further prior notice.

11 Dated: June 18, 2021

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14 U.S. District Judge  
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20 <sup>3</sup> See *Houston v. McGinnis, et al.*, 1:92-cv-280-RHB-JGS (W.D. Mich. 1992) (complaint  
21 dismissed as frivolous on May 11, 1992); *Houston v. Vidor, et al.*, 4:92-cv-35-BFG-HWB  
22 (W.D. Mich. 1992) (complaint dismissed as frivolous on April 24, 1992); and *Houston v.*  
23 *Skulnick, et al.*, 3:07-cv-00459-BES-VPC (D. Nev. 2007) (complaint dismissed for failure  
to state a claim on October 23, 2007). The Court takes judicial notice of its prior records  
in these matters and notes that, under *Tierney v. Kupers*, 128 F.3d 1310 (9th Cir. 1997), actions  
dismissed for frivolity, maliciousness, or for failure to state a claim prior to the effective date of  
the Prison Litigation Reform Act of 1996 are included in the 28 U.S.C. § 1915(g) calculation for  
three strikes. *Id.* at 1311.